

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 09-cr-30098-DRH  
 )  
MICHAEL C. FINTON, )  
 ) July 20, 2010  
Defendant. )

TRANSCRIPT OF PROCEEDINGS  
MOTION HEARING  
BEFORE THE HONORABLE DAVID R. HERNDON  
CHIEF UNITED STATES DISTRICT COURT JUDGE

**APPEARANCES:**

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Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1           **(Court convened)**

2           THE COURT: We've called the matter of  
3           United States of America vs. Michael C. Finton, Case  
4           No. 09-30098. The Government is present and represented by  
5           Assistant United States Attorney David Risley, Assistant  
6           United States Attorney Eric Long, and Assistant Attorney  
7           General Alamdar Hamdani. Good morning, gentlemen.

8           MR. RISLEY: Good morning.

9           THE COURT: In my district I look over here to look  
10          at the prosecutors. It's different here. Defendant's  
11          present in court. He is with counsel, Robert Scherschligt  
12          and -- is it Robert Al --

13          MR. ALVARADO: Alvarado, Judge.

14          THE COURT: Apologize for that.

15          We originally called this matter for a hearing  
16          relative to the issues surrounding the psychiatric  
17          evaluation that I ordered relative to Mr. Finton. Just had  
18          a conversation in chambers because Mr. Finton has filed some  
19          pro se motions, and I wanted to find out if Mr. Finton was  
20          going to persist in these pro se motions. It sounds like  
21          that's going to be the case.

22          Mr. Finton, let me direct these comments to you.  
23          You filed a motion that you called Petition for Dismissal of  
24          Counsel, filed that on July 15th. And in order to narrow  
25          the issues relative to this motion that you filed, it sounds

1 to me like you're not complaining about the work performance  
2 of your lawyers; is that true, sir?

3 *THE DEFENDANT:* I'm not addressing that at the  
4 moment.

5 *THE COURT:* But that's -- and that's not addressed  
6 in this motion, correct?

7 *THE DEFENDANT:* Correct.

8 *THE COURT:* What you address really in this motion  
9 is that, through the course of the pendency of the case --  
10 and I'm trying to state this as delicately as I can, but you  
11 don't want the lawyers to be distracted with the concept  
12 that they at points in time are in and out of this  
13 courthouse, and you don't want them to begin to focus at  
14 some point in time on that fact, sort of conflicting  
15 interests so-to-speak, because the judges in this courthouse  
16 have recused themselves, and kind of a like concept. Is  
17 that a fair assessment of your motion?

18 *THE DEFENDANT:* Yes, sir.

19 *THE COURT:* The judges in the case recused  
20 themselves, and it's really under some case law that --  
21 *United States vs. Nettles*. It's a Seventh Circuit case.  
22 Are you familiar with the case?

23 *THE DEFENDANT:* No, sir.

24 *THE COURT:* When you filed the motion did you have  
25 an opportunity to do any research on the issue or is this

1 just something that kind of made common sense to you because  
2 the other people that were in the courthouse had gotten off  
3 the case?

4           THE DEFENDANT: Yes, sir. And to your second  
5 question, I'm not really allowed access to the law library.

6           THE COURT: Okay. In that case the Seventh Circuit  
7 said that the judges should recuse themselves because of a  
8 similar situation, allegations similar to what have been  
9 made in this case. But one of the interesting things about  
10 that, in that case there was no discussion about the lawyers  
11 representing the Defendant. It was just not an issue in the  
12 case, so there's -- I can't say to you, and no one can argue  
13 here that there's a holding in the case that the lawyer  
14 representing the Defendant must be someone who doesn't go in  
15 and out of the courthouse, someone within sort of a zone of  
16 danger, anything like that.

17           As a matter of fact, the lawyer that was  
18 representing the Defendant was someone who regularly appears  
19 in that courthouse. So you couldn't, for example, say to  
20 me, *You know, Judge Herndon, in that Nettles case they spoke*  
21 *to this issue and they said that the lawyer representing the*  
22 *Defendant has to be someone who has no association with the*  
23 *courthouse that was the subject of the allegations in the*  
24 *case. There just hasn't been a case, to my knowledge, that*  
25 *even discusses this issue, so this is kind of the first*

1 time, if you will, that a Defendant raises this issue, *Hey,*  
2 *you know, everybody else gets out of the case that's*  
3 *associated with the courthouse. Why is it that I have*  
4 *lawyers who regularly do business in the courthouse?*

5 Mr. Scherschligt, where is your office located?

6 MR. SCHERSCHLIGT: We are about a block to the  
7 north of the courthouse, Judge. We're at Sixth and Adams,  
8 and the courthouse is at Sixth and Monroe.

9 THE COURT: And I know the answer to this question,  
10 but for purposes of this record, your ethical obligation  
11 when you take on a case is what?

12 MR. SCHERSCHLIGT: Well, we would zealously  
13 represent Mr. Finton just as we would represent any other  
14 client, Judge.

15 THE COURT: And have you ever felt a conflict with  
16 that ethical obligation during the course of your  
17 representation of Mr. Finton?

18 MR. SCHERSCHLIGT: Not at all, Judge.

19 THE COURT: Have you ever felt or even thought  
20 about this issue of, *Hey, I could have been there that day,*  
21 *or the day these allegations were made?* And of course,  
22 we're not even touching on the issue of guilt or innocence  
23 here, but just have you ever even thought about that  
24 concept?

25 MR. SCHERSCHLIGT: Well, I've thought about the

1 fact that we are regularly in that courthouse, but no, that  
2 would have no effect on my ability to be -- to have an  
3 undivided loyalty to Mr. Finton.

4 *THE COURT:* Okay. All right.

5 Mr. Finton, let me ask you this: There's  
6 absolutely no dispute about the fact that what you face in  
7 this case is very serious in terms of potential punishment.  
8 I mean the statutory term is any number of years up to life.  
9 And you're familiar with that?

10 *THE DEFENDANT:* Yes, sir.

11 *THE COURT:* And the guidelines, if I -- in my look  
12 at the guidelines, the guideline range in this case is  
13 extraordinarily serious, something like probably 30 years to  
14 life, if I've calculated them right. That's a ballpark  
15 figure. Don't hold me to that, but -- because I'll make a  
16 further determination if I ever get to that point. If  
17 you're found guilty or ever plead guilty, that would be the  
18 only time I'd make an official calculation, but in any  
19 event, you're facing something extraordinarily serious in  
20 terms of punishment if you're found guilty or plead guilty.  
21 We can all agree on that, true?

22 *THE DEFENDANT:* Yes, sir.

23 *THE COURT:* So at the end of the day, one thing  
24 that we can also agree on -- and I think this side of the  
25 courtroom agrees with me just as much as this side of the

1 courtroom -- and that is, nobody wants you to go through  
2 this process without understanding that you've received  
3 fairness in every part of the proceeding, every step of the  
4 way. Do you feel like your representation is compromised in  
5 some way because of the things that you talk about in your  
6 motion?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you feel that way because of this  
9 logical concept that you have in your mind that, *These other*  
10 *people have taken themselves out of the case, and,*  
11 *therefore, why should I have someone represent me that is in*  
12 *a similar position with these other people?*

13 THE DEFENDANT: Yes, sir.

14 THE COURT: That's true? Okay.

15 Mr. Risley, does the Government take a position in  
16 this matter?

17 MR. RISLEY: Your Honor, the Government doesn't  
18 really care who the Defendant's attorney is. We do care  
19 whether he has competent and conflict-free representation,  
20 that his representation meets with constitutional standards,  
21 but beyond that, we don't really take a position in this.

22 We're aware of the interests that the Defendant has  
23 in this case. We can understand his argument. By the same  
24 token, the logic applies to virtually any attorney in the  
25 Central District of Illinois or anywhere else who has a

1 federal practice in this building. Our really only concern,  
2 in practical terms, is, we've spent -- we've invested a lot  
3 in the discovery process and all of that with these  
4 attorneys, and they have done a fine job in our -- just from  
5 our interaction with them in the course of this case. We  
6 know that to be true. We have no questions about their  
7 competence. We've dealt with them in many other cases.  
8 They're highly competent and they've been vigorously  
9 defending the Defendant's interests in this case. If we  
10 start all over again for some reason with new attorneys, we  
11 hope it would be for a good reason and not a frivolous  
12 reason, but beyond that, we have no real position other than  
13 that.

14 *THE COURT:* Mr. Finton, Mr. Risley brings up a  
15 point. The point is -- and I have no personal knowledge of  
16 this at this point in time, other than what I understand  
17 from ruling on a Motion to Continue at this point -- not  
18 this point -- at some point earlier in the litigation. It  
19 was filed by your lawyer, having to do with needing  
20 additional time to get through the voluminous discovery. So  
21 I gather from that that the documentation in this case is  
22 quite substantial. So I have no problem in giving someone  
23 the remedy that they seek on some fairness basis.

24 On the other hand, if someone is seeking some sort  
25 of remedy because they're either trying to put off the



1 inevitable, trying to waste time, trying to just buy time  
2 for something that is just not an appropriate part of the  
3 litigation process, that's a different story all together.  
4 Because you see, if you get a new lawyer, well, that lawyer  
5 has to start from the beginning and go through all of that  
6 discovery, all of those documents and the like.

7 I take it, first of all, you want to be represented  
8 by a lawyer; you're not interested in representing yourself?

9 *THE DEFENDANT:* That's correct, sir.

10 *THE COURT:* So while on the one hand I understand  
11 your logic -- I'm not saying it has a legal basis, but I  
12 understand your logic, and the reason I say, *I'm not saying*  
13 *it has a legal basis*, is because you're going somewhere  
14 where no one else has gone before. There's been a lot of  
15 back and forth lately and my concern is that perhaps part of  
16 your motivation is just to buy time, maybe just to get a  
17 second opinion. What about not discharging these lawyers,  
18 but adding someone to the team? Is that something that's  
19 acceptable to you?

20 *THE DEFENDANT:* Yes, Your Honor. It's just that  
21 due to the seriousness of the potential consequences in this  
22 case, I just want to be totally clear on everything. I want  
23 to make sure that -- I want to make sure everything's on the  
24 up and up.

25 *THE COURT:* And I don't -- I'm not disagreeing with

1 your logic here either. So part of your motivation is to  
2 put a new set of eyes on the case?

3 *THE DEFENDANT:* Not really. It's just that I put  
4 myself in his position, you know, and I mean it's not  
5 just -- he comes into the building, they know people here.  
6 If I were in his position I would probably ask myself -- I  
7 would probably remove myself from the case just to alleviate  
8 any concerns.

9 *THE COURT:* So part of your concern is a concern  
10 that, you know, *Is the advice I'm getting here tainted by*  
11 *this concept that, you know, hey, I'm giving advice to a guy*  
12 *that's accused of doing something -- accused of planting a*  
13 *bomb that would have blown up this building, and I'm working*  
14 *with these same people, and how are they going to look at me*  
15 *afterwards, things like that; that's your concern?*

16 *THE DEFENDANT:* Yes, Your Honor. It seems to be  
17 about the same thing as if I were accused of robbing a gas  
18 station and putting the guy who stocks the shelves as my  
19 attorney, you know, and that didn't seem like it would fly  
20 very far.

21 *THE COURT:* So you have more -- you put more focus  
22 on that sort of a practical concern than you do on this  
23 ethical consideration that I brought up a little bit ago?

24 *THE DEFENDANT:* Well, I mean it's both. It's both.  
25 I just wanted to make clear that I'm not trying to be

1 frivolous, I'm not trying to waste time or anything like  
2 this.

3           THE COURT: What about if I appointed the Public  
4 Defender's office from the Southern District of Illinois,  
5 where I come from, initially to add to the team? I'm not  
6 sure that Mr. Scherschligt's office would even agree to  
7 that. They may just withdraw and say, *We're not going to*  
8 *participate in a tag team*, so-to-speak. But at least to try  
9 to avoid having to start from scratch. You meet with them,  
10 and in the end it may be that they will ultimately become  
11 the sole attorneys of record, but at least start with that  
12 prospect that maybe they can work together with your lawyer,  
13 and then if that doesn't work out, they become the attorneys  
14 of record in your case.

15           THE DEFENDANT: Is it possible to have a pro bono  
16 attorney, appoint a criminal attorney rather than somebody  
17 from the Public Defender's office at all?

18           THE COURT: You mean somebody off the CJA panel?

19           THE DEFENDANT: Yes, sir.

20           THE COURT: From this district or from the Southern  
21 District?

22           THE DEFENDANT: From the Southern District.

23           THE COURT: I could do that. I don't have a  
24 problem with that. Again, to work with your attorney or to  
25 be sole attorney of record?

1           THE DEFENDANT: Whatever you feel is best,  
2 Your Honor.

3           THE COURT: What I'm trying to do is not -- and the  
4 bottom line is, I want you to feel like you're receiving  
5 fair representation. My idea in adding counsel to this  
6 would be to try to avoid losing valuable time, not only for  
7 you, but we -- there are two interests here: You have a  
8 right to speedy trial but so does the public, Mr. Finton,  
9 and I know you don't have very big concern about the  
10 public's interest here, but that's a concern I have as well,  
11 and I have to look at the public interest here.

12           So if we can avoid losing valuable time, however  
13 this thing's going to end up, whether it's a trial of the  
14 case or some other disposition, it gives you an opportunity  
15 for that second opinion, if you will. This is a complex  
16 case, there's no question about it. I don't have any  
17 problem at all seeing that you get another opinion if that's  
18 one of the things you're interested in. I don't see that as  
19 an inappropriate step at all. Is that something you're  
20 interested in?

21           THE DEFENDANT: Yes, sir.

22           THE COURT: All right. I'll appoint a CJA panel  
23 lawyer from the Southern District, initially to work with  
24 your counsel, and if they have a problem with that, then  
25 we'll talk about that.

1           THE DEFENDANT: Thank you, Your Honor.

2           THE COURT: Now, you had an issue with respect  
3 to -- you said that your contacts were taken from you and --  
4 do you not have glasses?

5           THE DEFENDANT: Correct, sir.

6           THE COURT: So you have -- right now you're not  
7 able to see correctly, is that --

8           THE DEFENDANT: Well, it's blurry. They were  
9 medicated contacts. I had a prescription for them.

10          THE COURT: Okay. And to your knowledge, where are  
11 these contacts?

12          THE DEFENDANT: They are in the possession of the  
13 Federal Bureau of Investigation.

14          THE COURT: Okay. So my direction will be that the  
15 Marshal Service, in whose custody you are, are either going  
16 to get you a correct set of contacts or glasses, whichever  
17 it takes. I mean there's no reason for you not to see  
18 correctly. I can't imagine you not seeing correctly.

19          THE DEFENDANT: Thank you, Your Honor.

20          THE COURT: And Mr. Scherschligt, you'll follow up  
21 on this? I don't know why he can't -- I mean they're  
22 supposed to provide him with appropriate medical care, and  
23 seeing correctly is appropriate medical care.

24          MR. SCHERSCHLIGT: I will follow up, Judge.

25          THE COURT: All right. So that's my order and

1 direction to the Marshal Service.

2 *THE DEFENDANT:* And about the money, sir?

3 *THE COURT:* Pardon me?

4 *THE DEFENDANT:* I had a question also about the  
5 \$158 that was in my possession when I was arrested.

6 *THE COURT:* Is that the subject of some seizure?

7 *MR. RISLEY:* I can speak to that, Your Honor. The  
8 contacts we're keeping because they were colored. They  
9 would be evidence in the case. The money that was on his  
10 person at the time is not evidence. It's my understanding  
11 the FBI has it in their evidence vault. They have to go  
12 through the process of getting it out of there, but we can  
13 return it to anybody that the Defendant designates as the  
14 recipient, so we'll take care of that even informally with  
15 the Defendant's attorneys.

16 *THE COURT:* I don't have a problem not returning  
17 contacts or evidence but the Marshal Service has an  
18 obligation to provide him with appropriate medical care, and  
19 that includes appropriate corrective --

20 *THE DEFENDANT:* There's more than one set in the  
21 box that was in my suitcase when I was arrested. There's  
22 more than one set of contacts.

23 *THE COURT:* You can't get back what's evidence.  
24 Now, if both pair of contacts are evidence, you can't get  
25 that back, but that doesn't mean that you're not entitled to

1 corrective lenses, period.

2 MR. RISLEY: But we certainly can look and see what  
3 the prescription is and who the doctor may be, and we can go  
4 from there.

5 THE COURT: Absolutely. Now, as far as the copy of  
6 the docket sheet, we've got a copy here. We're going to  
7 give you a copy of your docket sheet. That's not a problem.

8 THE DEFENDANT: Thank you, Your Honor.

9 THE COURT: Now, we're not going to do the  
10 competency issue until we've got the -- until your new  
11 lawyer comes on board so that we can -- unless you -- do you  
12 want to take care of that today?

13 THE DEFENDANT: That's fine, sir.

14 THE COURT: You want to do it today?

15 THE DEFENDANT: Whatever you think's best.

16 THE COURT: It's not what I think best because if  
17 you have any question at all about your current set of  
18 attorneys handling that, I'm not going to go forward with  
19 it. Do you want to proceed with it?

20 THE DEFENDANT: I'd rather wait, sir.

21 THE COURT: Anything else we have to take care of  
22 today?

23 MR. RISLEY: I don't know of anything else,  
24 Your Honor.

25 THE COURT: Nothing else has been filed,

1 Mr. Scherschligt?

2 MR. SCHERSCHLIGT: I believe that covers it,  
3 Your Honor.

4 THE COURT: Mr. Finton, anything else?

5 THE DEFENDANT: I do have one motion I want to -- I  
6 brought with me in court today.

7 THE COURT: Would you hand it to your lawyer, let  
8 him bring it up.

9 I don't know how you can write so small and not see  
10 well, Mr. Finton. Your writing is very small.

11 THE DEFENDANT: I'm nearsighted.

12 THE COURT: Make me go blind. Well,  
13 Mr. Scherschligt -- I'm sorry, Mr. Finton -- you're really  
14 asking for some records that -- if I think for some reason  
15 your current defense counsel have not done their job in  
16 getting the records they should have gotten, then talk to  
17 the next counsel. Talk to the counsel that I appoint about  
18 this because this is something that -- really talking about  
19 a discovery process that counsel should handle. So you're  
20 entitled to all fairness in the course of this litigation,  
21 there's no question about that, but it's my practice that,  
22 despite what we just handled as far as these other motions  
23 you handled, I don't want to get into a practice of handling  
24 pro se motions about discovery when somebody's represented  
25 by a lawyer, so I'll let -- I'll leave it up to your counsel



1 to take care of this issue.

2 *THE DEFENDANT:* Thank you.

3 *THE COURT:* Do you understand that concept?

4 *THE DEFENDANT:* Yes.

5 *THE COURT:* All right. Anything else, Mr. Finton,  
6 Mr. Scherschligt?

7 *MR. SCHERSCHLIGT:* Your Honor, with the addition of  
8 this panel attorney and his obvious need to review a large  
9 portion of the discovery, I think that's going to  
10 necessitate a continuance of the pretrial, trial dates, and  
11 motions deadline.

12 *THE COURT:* Yeah. For now let's do this: Let's  
13 cancel the final pretrial, and then -- I'm confident you're  
14 right about the trial date, but let's take one step at a  
15 time. So I'll wait and see a written motion when it becomes  
16 evident that that's what you need. I mean I don't know  
17 what -- and once the CJA panel lawyer gets involved, and the  
18 two of you and Mr. Finton can meet with this panel attorney,  
19 you just have to work out between yourselves who plays what  
20 role and how it's going to go. And if there are problems,  
21 there's something else we need to talk about, other motions  
22 need to be filed, I'm just an hour and 15 minutes and a  
23 rainstorm away, so let me know if I need to come back.

24 *MR. SCHERSCHLIGT:* Could we also entertain a Motion  
25 to Continue the deadline for the pretrial motions, which is

1 currently set for July 30th, this month?

2 THE COURT: Yes, absolutely, we'll postpone that.  
3 That will be off.

4 Mr. Risley, is there -- I don't want to ignore you  
5 and your needs in this case. Anything else we need to take  
6 care of from your side of the ledger?

7 MR. RISLEY: No, Your Honor.

8 THE COURT: Okay. Very well, folks. If there's  
9 nothing further, we stand adjourned, and I appreciate your  
10 work.

11 *(Court adjourned)*

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**REPORTER'S CERTIFICATE**

I, Laura A. Blatz, RPR, CRR, CCR(MO), Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported in shorthand the proceedings contained in the foregoing 18 pages, and that the same is a full, true, correct, and complete transcript from the record of proceedings in the above-entitled matter.

Dated this 12th day of November, 2013.

/s/ Laura A. Blatz, RPR, CRR

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